



record was held open until March 27, 1997 for filing of post-hearing memoranda by the parties.

FINDINGS OF FACT

1. The Town of Pelham is a "public employer" of police officers and other personnel within the meaning of RSA 273-A:1 X.
2. The American Federation of State, County and Municipal Employees, Local 3657 (AFSCME) is the duly certified bargaining agent for police officers employed by the Town of Pelham.
3. The Town and the Union are parties to a collective bargaining agreement (CBA) for the period April 1, 1995 through March 31, 1996 and continuing thereafter under the *status quo* doctrine, (Joint Exhibit No. 1). That agreement contains a three step grievance procedure at Article 16.6 which involves progressive appeals to the Chief, the Administrative Assistant and then to final and binding arbitration. Excluded from the grievance procedures are (1) any matters for which a specific method of review is prescribed by law, (2) any matter which according to law, is beyond the scope of authority of the Administrative Assistant or limited to unilateral action of the Administrative Assistant alone, and (3) any grievance for which the grievance or grievants or organization...has not in writing waived the right...to submit the grievance to any other administrative or judicial tribunal. Article 16.3 provides that, "no reprisals of any kind will be taken by the Administrative Assistant or employees against any party in interest or other participant in the grievance procedure."
4. The Town has personnel rules and policies which were accepted by the Board of Selectmen on August 21, 1990. They do not apply "in those areas that are found to conflict with Federal or State statute(s)." (Joint Exhibit No. 2.)
5. Michael Ogonowski has been a sergeant in the Pelham Police Department since May of 1980. He is the Department's court prosecutor. As chapter chair of his local, he reviews and processes grievances.
6. Orgonowski attended graduation ceremonies for the

Police Academy on March 29, 1996. He was told to do so by Chief David Rowell to represent both the Department and Rowell who did not attend. (Union Exhibit No. 6.) Sometime thereafter, on or about April 3, 1996, Orgonowski was advised by Rowell that Selectman Paul Scott had received a complaint that Orgonowski attended and did so on overtime status. This complaint was not in writing as contemplated by Police Department policies (Union Exhibit No. 1.) This resulted in Orgonowski's filing a grievance on or about April 10, 1996 for violation of the town's harassment policy. (Union Exhibit No. 2.)

7. Orgonowski, Steward Dennis Lyons and Rowell met to discuss this grievance on April 17, 1996. Meanwhile, on April 11, 1996, Lyons had written two letters to Administrative Assistant Peter Flynn (Union Exhibit Nos. 3 and 8) seeking details of the anonymous complaint as well as any policies relating to attending graduation ceremonies. During the April 17th meeting, Rowell told Orgonowski and Lyons how an anonymous caller had called Selectman Derby and complained that Ogonowski had attended the graduation and had been on overtime pay status at the time. Rowell's account of the April 17th meeting (Union Exhibit No. 2, page 2) states that he detailed Orgonowski to attend the graduation, that he did attend, especially to commemorate the graduation of Patrolman Joseph McDowell, and that he was in regular, not overtime, status at that time. Rowell concluded that Orgonowski "carried out my orders...by attending the graduation ceremonies on 29 March 1996. I, therefore, defer to step #2 of the grievance procedure, since it is not within my authority to make the requested adjustments in said grievance."
8. Orgonowski filed a step #2 grievance on April 19, 1996. Flynn denied it by letter of May 29, 1996, saying, in pertinent part:

It is apparent that the procedure as outlined in Section 16.1 of the contract does not permit the grievance of a violation of a Town policy.

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As specified in Section 16.6, Step I requires (d), the language of the agreement that has allegedly been violated or misapplied and (e) specific injury or loss which has been claimed. Neither

of these conditions have [sic] been met in the filing of this grievance.

By a second letter of the same date, Flynn asked Orgonowski for the specifics of his harassment complaint (e.g., whether based on age, race, color, national origin, religion, sex, marital status, disability or veteran status) so that he might pursue it further. There is no evidence that Orgonowski responded to this letter from Flynn. (Union Ex. No. 2, page 6).

9. On June 4, 1996 Steward Gary Fisher wrote Flynn about the Orgonowski grievance saying, "Please be advised that it is the intention of the Unit and the grievant to pursue this matter to step 3." The Town's date stamp shows this to have been received June 4, 1996. Likewise, in an undated letter, date stamped by the Town as received June 5, 1996, Lyons told Flynn, "Please allow this letter as notification to take 96-3 [the Orgonowski grievance] to step 3." Neither of these documents was timely. Under Article XVI, Step 3 of the CBA:

If the decision of the Administrative Assistant does not resolve the grievance, the Union shall have the sole right to appeal that decision and the matter shall be submitted to arbitration providing the Union notifies the Administrative Assistant of such request within ten (10) days of receipt by the Union of the Administrative Assistant's decision.

10. During the course of the hearing, the PELRB heard testimony about Orgonowski's being nominated by Rowell as "Employee of the Quarter," a town-wide honor. This nomination stemmed from Orgonowski's organizing and sponsoring a cookout for town employees. The selectmen disapproved this nomination by a 3 to 2 vote. Orgonowski then filed a grievance pertaining to his non-selection on October 28, 1996 (Union Exhibit No. 7) some 26 days after the filing of this ULP. We have neither been asked to extend nor granted leave to amend the ULP for acts alleged to have been committed after its date of filing.
11. There is no evidence that any of the acts complained of in the ULP have resulted in adverse actions, un-

favorable evaluations, non-selection(s) or the imposition of discipline on Orgonowski.

### DECISION AND ORDER

We find no conduct on the part of the public employer, as complained of in these proceedings, to have been violative of RSA 273-A:5 such as to constitute a ULP. While Orgonowski has listed numerous violations inclusive of RSA 273-A:5 I (a) and (d), without discipline, adverse actions, impact, actual loss or some tangible representation of deprivation, restraint, coercion or discrimination as prohibited by those sections, we cannot, and do not, find any violations thereof.

The ULP complaint claimed the Town violated RSA 273-A:5 I (g) "on numerous occasions" and "did not follow Town policy" or "provide discovery at a grievance hearing." RSA 273-A:5 I (g) makes it a ULP to fail to comply with RSA 273-A or rules adopted thereunder. Neither adherence to Town policy nor providing discovery is covered by RSA 273-A or the rules of the PELRB. Additionally, "on numerous occasions" lacks specificity and gives us no hint of how to apply the six (6) month provisions of RSA 273-A:6. The 273-A:5 I (g) allegations fail to establish a ULP and must be dismissed.

RSA 273-A:5 I (h) establishes a ULP for breaching a CBA. While we see no breach on the face of the complaint or based on the testimony provided, we observe that the Union stopped its grievance processing at Step 2. The contract defines a grievance as "an alleged violation, misinterpretation, or misapplication of any provision of this agreement." We cannot comprehend why the Union would drop, by ceasing to pursue in a timely manner, its grievance and then expect to proceed with it as a ULP. The Union failed to carry its burden in showing us how "the Department rules and regulations represents a unilateral change in terms and conditions of employment" such as to be a breach of contract and a violation under RSA 273-A:5 I (h).

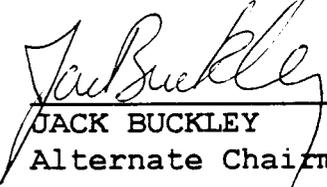
The RSA 273-A:5 I (i) violation must also be dismissed because the Union, again, has failed to carry its burden in showing us how the Town has made any rule or regulation "relative to the terms and conditions of employment that [has] invalidate[d] any portion of an agreement entered into by the public employer." If that be the case, what was the rule or regulation and what part of the CBA did it invalidate? Article 3.1 of the CBA is the management rights clause. Section (f) thereof gives the Town the "right to make rules, regulations and

policies not inconsistent with the provisions of this agreement and to require compliance therewith." The Union has failed to show us such actions which are inconsistent with the CBA.

Accordingly, the ULP is hereby DISMISSED in its entirety.

So Ordered.

Signed this 4th day of APRIL. 1997.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members Richard Roulx and E. Vincent Hall present and voting.